

Assembly Bill No. 1629

Passed the Assembly October 7, 2010

Chief Clerk of the Assembly

Passed the Senate October 7, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 15432 of the Government Code, and to amend Sections 129275, 129280, 129285, and 129295 of the Health and Safety Code, relating to developmental services, declaring the urgency thereof, to take effect immediately, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1629, Committee on Budget. Loan programs for facilities for persons with developmental disabilities.

Under existing law, the California Health Facilities Financing Authority Act, the California Health Facilities Financing Authority administers various provisions relating to the financing of health facility projects, including construction and renovation projects. Existing law includes within the definition of a health facility, for purposes of the act, a residential facility, which is defined to include a residential facility for persons with developmental disabilities, as provided for under the provisions permitting proposals for housing for these persons to be approved by the department. Existing law specifically exempts from this definition a residential facility for persons with special health care needs, as defined.

This bill would delete this exemption.

The California Health Facilities Financing Authority Act also defines “participating health institution” to mean a city, city and county, or county, a district hospital, or a private nonprofit corporation or association authorized by the laws of this state to provide or operate a health facility and that undertakes the financing or refinancing of the construction or acquisition of a project or of working capital.

This bill would add to this definition a limited liability company whose sole member is a nonprofit corporation or association to which the above-described conditions apply.

Existing law, the Small Facility Loan Guarantee for Developmental Disability Programs, creates a program to provide loan insurance to nonprofit corporations that provide community-based programs that assist clients with developmental

disabilities that live in institutional settings to move to more independent living arrangements.

This bill would rename those provisions as the Small Facility Loan Guarantee for Programs Serving People with Developmental Disabilities.

Under existing law, facilities approved by area developmental disabilities boards are eligible for loan insurance pursuant to the program if they meet specified criteria.

Existing law provides, with respect to loan eligibility, that facilities shall not require prescribed approval for the issuance of loan insurance until a specified determination is made.

This bill would delete this provision.

Existing law, known as the Bay Area Housing Program, permits the State Department of Developmental Services to approve a proposal by Golden Gate Regional Center, Regional Center of the East Bay, and San Andreas Regional Center to provide for, secure, and ensure the full payment of a lease or leases on housing for persons with developmental disabilities, if prescribed conditions are met.

This bill would require, under the loan insurance program, that these regional centers provide for, secure, and ensure the full payment of a lease or leases developed pursuant to these housing proposal provisions.

Existing law creates the California Housing Finance Fund, which is continuously appropriated to the California Housing Finance Agency for the purpose of making housing construction loans.

The bill would allow, upon the order of the Director of Finance, a loan from the General Fund to the California Housing Finance Fund in an amount not to exceed the unpaid principal balance of loans for the above-described housing, but not more than \$88,000,000, in a specified situation and to be repaid from proceeds of the California Health Facilities Financing Authority's issuance of bonds for the program prior to June 30, 2011.

Existing law requires that the total amount of loans insured pursuant to this program not exceed \$15,000,000 and gives preference for loans under \$300,000 to single facilities that will serve 6 or fewer persons. Under existing law, loans up to \$300,000 may be insured for the total construction amount.

This bill would allow loans to be insured for the cost of construction, improvement, and expansion, which may exceed the

current value of the health facility when supported by other security for, or guaranty of, the debt. The bill would increase the total amount of loans that may be insured pursuant to the program to \$100,000,000.

Existing law also provides for a pilot program, not to exceed 30 facilities, to insure loans to nonprofit borrowers that are not licensed to operate the facilities, as specified, and limits the aggregate amount of the loans insured through this pilot program to \$6,000,000.

This bill would eliminate the designation of this program as a pilot program. It would limit eligible borrowers to those that have a long-term residency lease, as defined, with a service provider selected by the applicable regional center. It would provide that the number of facilities that could be insured would be increased from 30 to 100 and the total aggregate amount of these loans insured would be increased to \$100,000,000.

Existing law establishes the Health Facility Construction Loan Insurance Fund in the State Treasury, to be continuously appropriated to carry out the provisions and administrative costs of the California Health Facility Construction Loan Insurance Law, including the program for insuring loans relating to facilities for people with developmental disabilities described above.

By increasing the aggregate amount of the loans that may be insured through this program and by expanding program eligibility, this bill would constitute an appropriation.

This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 15432 of the Government Code is amended to read:

15432. As used in this part, the following words and terms shall have the following meanings, unless the context clearly indicates or requires another or different meaning or intent:

(a) “Act” means the California Health Facilities Financing Authority Act.

(b) “Authority” means the California Health Facilities Financing Authority created by this part or any board, body, commission,

department, or officer succeeding to the principal functions thereof or to which the powers conferred upon the authority by this part shall be given by law.

(c) “Cost,” as applied to a project or portion of a project financed under this part, means and includes all or any part of the cost of construction and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which those buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to, during, and for a period not to exceed the later of one year or one year following completion of construction, as determined by the authority, the cost of insurance during construction, the cost of funding or financing noncapital expenses, reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, the cost of engineering, service contracts, reasonable financial and legal services, plans, specifications, studies, surveys, estimates, administrative expenses, and other expenses of funding or financing, that are necessary or incident to determining the feasibility of constructing any project, or that are incident to the construction, acquisition, or financing of any project.

(d) “Health facility” means any facility, place, or building that is licensed, accredited, or certified and organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, or physical, mental, or developmental disability, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, and includes, but is not limited to, all of the following types:

(1) A general acute care hospital that is a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services.

(2) An acute psychiatric hospital that is a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that

provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(3) A skilled nursing facility that is a health facility that provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability or skilled nursing care on an extended basis.

(4) An intermediate care facility that is a health facility that provides the following basic services: inpatient care to ambulatory or semiambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability or continuous skilled nursing care.

(5) A special health care facility that is a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff that provides inpatient or outpatient, acute or nonacute care, including, but not limited to, medical, nursing, rehabilitation, dental, or maternity.

(6) A clinic that is operated by a tax-exempt nonprofit corporation that is licensed pursuant to Section 1204 or 1204.1 of the Health and Safety Code or a clinic exempt from licensure pursuant to subdivision (b) or (c) of Section 1206 of the Health and Safety Code.

(7) An adult day health center that is a facility, as defined under subdivision (b) of Section 1570.7 of the Health and Safety Code, that provides adult day health care, as defined under subdivision (a) of Section 1570.7 of the Health and Safety Code.

(8) Any facility owned or operated by a local jurisdiction for the provision of county health services.

(9) A multilevel facility is an institutional arrangement where a residential facility for the elderly is operated as a part of, or in conjunction with, an intermediate care facility, a skilled nursing facility, or a general acute care hospital. "Elderly," for the purposes of this paragraph, means a person 62 years of age or older.

(10) A child day care facility operated in conjunction with a health facility. A child day care facility is a facility, as defined in Section 1596.750 of the Health and Safety Code. For purposes of

this paragraph, “child” means a minor from birth to 18 years of age.

(11) An intermediate care facility/developmentally disabled habilitative that is a health facility, as defined under subdivision (e) of Section 1250 of the Health and Safety Code.

(12) An intermediate care facility/developmentally disabled-nursing that is a health facility, as defined under subdivision (h) of Section 1250 of the Health and Safety Code.

(13) A community care facility that is a facility, as defined under subdivision (a) of Section 1502 of the Health and Safety Code, that provides care, habilitation, rehabilitation, or treatment services to developmentally disabled or mentally impaired persons.

(14) A nonprofit community care facility, as defined in subdivision (a) of Section 1502 of the Health and Safety Code, other than a facility that, as defined in that subdivision, is a residential facility for the elderly, a foster family agency, a foster family home, a full service adoption agency, or a noncustodial adoption agency.

(15) A nonprofit accredited community work activity program, as specified in subdivision (e) of Section 4851 and Section 4856 of the Welfare and Institutions Code.

(16) A community mental health center, as defined in paragraph (3) of subdivision (b) of Section 5667 of the Welfare and Institutions Code.

(17) A nonprofit speech and hearing center, as defined in Section 1201.5 of the Health and Safety Code.

(18) A blood bank, as defined in Section 1600.2 of the Health and Safety Code, licensed pursuant to Section 1602.5 of the Health and Safety Code, and exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(19) A residential facility for persons with developmental disabilities, as defined in Sections 4688.5 and 4688.6 of the Welfare and Institutions Code, which includes, but is not limited to, a community care facility licensed pursuant to Section 1502 of the Health and Safety Code and a family teaching home as defined in Section 4689.1 of the Welfare and Institutions Code.

“Health facility” includes a clinic that is described in subdivision (I) of Section 1206 of the Health and Safety Code.

“Health facility” includes the following facilities, if the facility is operated in conjunction with one or more of the facilities

specified in paragraphs (1) to (19), inclusive, of this subdivision: a laboratory, laundry, or nurses or interns residence, housing for staff or employees and their families or patients or relatives of patients, a physicians' facility, an administration building, a research facility, a maintenance, storage, or utility facility, all structures or facilities related to any of the foregoing facilities or required or useful for the operation of a health facility and the necessary and usual attendant and related facilities and equipment, and parking and supportive service facilities or structures required or useful for the orderly conduct of the health facility.

"Health facility" does not include any institution, place, or building used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship.

(e) "Participating health institution" means a city, city and county, or county, a district hospital, or a private nonprofit corporation or association, or a limited liability company whose sole member is a nonprofit corporation or association authorized by the laws of this state to provide or operate a health facility and that, pursuant to the provisions of this part, undertakes the financing or refinancing of the construction or acquisition of a project or of working capital as provided in this part. "Participating health institution" also includes, for purposes of the California Health Facilities Revenue Bonds (UCSF-Stanford Health Care) 1998 Series A, the Regents of the University of California.

(f) "Project" means construction, expansion, remodeling, renovation, furnishing, or equipping, or funding, financing, or refinancing of a health facility or acquisition of a health facility to be financed or refinanced with funds provided in whole or in part pursuant to this part. "Project" may include reimbursement for the costs of construction, expansion, remodeling, renovation, furnishing, or equipping, or funding, financing, or refinancing of a health facility or acquisition of a health facility. "Project" may include any combination of one or more of the foregoing undertaken jointly by any participating health institution with one or more other participating health institutions.

(g) "Revenue bond" means any bond, warrant, note, lease, or installment sale obligation that is evidenced by a certificate of participation or other evidence of indebtedness issued by the authority.

(h) “Working capital” means moneys to be used by, or on behalf of, a participating health institution to pay or prepay maintenance or operation expenses or any other costs that would be treated as an expense item, under generally accepted accounting principles, in connection with the ownership or operation of a health facility, including, but not limited to, reserves for maintenance or operation expenses, interest for not to exceed one year on any loan for working capital made pursuant to this part, and reserves for debt service with respect to, and any costs necessary or incidental to, that financing.

SEC. 2. Section 129275 of the Health and Safety Code is amended to read:

129275. This article shall be known, and may be cited, as the Small Facility Loan Guarantee for Programs Serving People with Developmental Disabilities.

SEC. 3. Section 129280 of the Health and Safety Code is amended to read:

129280. The State of California has a compelling interest in the development of facilities for community-based programs that assist persons with a developmental disability living in an institutional setting to transition to more independent living arrangements. In order to meet this significant community need, it is further the intent of the Legislature to encourage programs to seek funding for facility development from private sources and with the assistance provided pursuant to this chapter.

To achieve this purpose in determining eligibility for loan insurance pursuant to this chapter, the following special provisions apply to facilities developed pursuant to Section 4688.5 of the Welfare and Institutions Code and meeting the intentions of this article:

(a) For purposes of this article, the following definitions shall apply:

(1) “Borrower” shall mean a political subdivision or nonprofit corporation approved by the regional center as an ownership entity that owns the project property.

(2) “Long-term residency lease agreement” shall mean a lease by the borrower, as lessor, of facilities developed pursuant to Section 4688.5 of the Welfare and Institutions Code to a service provider selected by a regional center, as lessee, having a term of at least as long as the term of the insured loan.

(3) “Nonprofit corporation” shall mean a corporation formed under or subject to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) or a limited liability company (LLC) whose sole member is a corporation formed under or subject to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) that meets applicable sections of the federal Internal Revenue Code governing nonprofit status.

(4) “Regional center” shall mean a private nonprofit corporation that contracts with the state and is organized pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code.

(5) “Service provider” shall mean an entity with the appropriate license, if required, that contracts with a regional center to provide services to persons eligible for regional center services.

(b) Notwithstanding subdivisions (i), (l), and (m) of Section 129050, any loan made pursuant to this article for a nonprofit corporation or a political subdivision may be fully insured equal to the total cost of construction, improvement, and expansion, which may exceed the current value of the health facility, including improvements, when supported by other security for, or guaranty of, the debt.

(c) The Golden Gate Regional Center, Regional Center of the East Bay, and San Andreas Regional Center shall provide for, secure, and ensure the full payment of a lease or leases developed pursuant to Section 4688.5 of the Welfare and Institutions Code.

SEC. 4. Section 129285 of the Health and Safety Code is amended to read:

129285. (a) Loans of under three hundred thousand dollars (\$300,000) for any single facility for six or fewer developmentally disabled shall have priority for obtaining loan insurance.

(b) The total amount of loans that may be insured pursuant to this article shall not exceed one hundred million dollars (\$100,000,000).

SEC. 5. Section 129295 of the Health and Safety Code is amended to read:

129295. The office may insure, pursuant to this article, loans to nonprofit borrowers that are not licensed to operate the facilities for which the loans are insured, provided that the borrower has

entered into a long-term residency lease agreement with a service provider selected by the applicable regional center to operate that facility. The number of facilities for which loans are insured under this section shall not exceed 100 and the aggregate amount of loans insured under this section shall not exceed one hundred million dollars (\$100,000,000).

SEC. 6. Upon the order of the Director of Finance, a loan from the General Fund may be made to the California Housing Finance Fund in an amount not to exceed the unpaid principal balance of the Bay Area Housing Program (program) loans for housing authorized by Section 4688.5 of the Welfare and Institutions Code, but not more than eighty-eight million dollars (\$88,000,000), that is currently financed on a line of credit scheduled to expire on February 28, 2011. The loan may not be made any sooner than January 15, 2011, and only if the California Health Facilities Financing Authority has failed to complete the sale and issuance of bonds to provide funding for the program prior to January 15, 2011. The loan shall be repaid from proceeds of the California Health Facilities Financing Authority's issuance of bonds for the program prior to June 30, 2011.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 2010, it is necessary that this act take effect immediately.

Approved _____, 2010

Governor